

ONE HUNDRED TENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (2021) 225-5051
Minority (2021) 225-5074

April 16, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
2157 Rayburn Building
Washington, D.C. 20515

Chairman Waxman:

This is to request that the Committee seek records from the National Archives relating to the Clinton Administration's 1997 issuance of a National Ambient Air Quality Standard ("NAAQS") for ozone. According to your March 14, 2008 letter, the Committee is investigating "the role of the White House in setting the [2008] Ozone Standard."¹ The role of President Clinton and the White House in the 1997 standards would provide a useful comparison.

Publicly available evidence already suggests that President Clinton was deeply and personally involved in issuance of the 1997 standards. On June 25, 1997, one month before Administrator Carol Browner finalized the 1997 Ozone NAAQS rule, President Clinton announced that he "approved some strong new regulations that will be somewhat controversial."² The process that led to President Clinton's "approv[al]" could shed important light on the White House's role in the 1997 issuance of the ozone standard.

Such similarities could demonstrate a truism that hardly needs a congressional investigation to establish: The President is in charge of the Executive branch. As Article II of the Constitution provides, "The executive power shall be vested in a President of the United States of America." Surely, the executive power includes the promulgation of ozone standards under the Clean Air Act.

Indeed, it is EPA that may have usurped the President's authority in 1997 by suppressing interagency criticism of the 1997 rule. According to one press report, "EPA Officials made a concerted effort to suppress criticism of its proposal from the [Office of

¹ Letter from Henry Waxman, Chairman, House Oversight and Government Reform Committee to Stephen Johnson, Administrator, U.S. EPA (Mar. 14, 2008).

² *Clinton Endorses Tougher New Air Standards*, CNN, June 25, 1997 (available at www.cnn.com/ALLPOLITICS/1997/06/25/clinton.air/).

Information and Regulatory Affairs] OIRA.”³ Indeed, the Chairman of the House Commerce Committee noted in his opening statement at a hearing on the 1997 standard that “there appears to have been some effort within the Administration to quash any dissent on these rules, as only a couple of agencies filed . . . comments.”⁴ Moreover, OIRA was allowed only three weeks, instead of the usual 90 days allowed for significant rules, to review a rule that, according to the Small Business Administration’s (SBA) Chief Counsel for Advocacy was “one of the most expensive regulations, if not the most expensive regulation, faced by small businesses in ten years or more.”⁵

Your March 12, 2008, letter also reflects a concern that the Administrator’s decision did not align with the recommendations of the Clean Air Science Advisory Committee (CASAC). According to that letter, this was a deviation from the historic precedent of “‘always accept[ing]’ CASAC’s ‘scientific advice with regard to final NAAQS designations’.”⁶

That assertion may not be accurate with respect to the original 1997 ozone standard. In that case, EPA Administrator Browner disregarded the opinion of CASAC when proposing standards for concentrations of ozone and particulate matter (PM). George Wolff, an atmospheric scientist and former head of CASAC, is quoted in the *Wall Street Journal* saying “the standards that have been chosen do not reflect the advice the CASAC has given.”⁷ He explained that “in setting a new standard for particulate matter only four of the CASAC panel’s 21 members supported EPA’s guidelines.”⁸ Further, in testimony before a House subcommittee, Wolff testified that CASAC reached no consensus on EPA’s recommended ozone standard: 10 members preferred five different standards and five members favored the concept of re-adjusting standards.⁹

This evidence of President Clinton’s involvement in the 1997 promulgation of the standard and EPA’s disregard of CASAC causes me to question the purpose of this investigation. But as long you choose to investigate this matter, a comparison to the

³ Congressional Groups Go After EPA Rule, 18 GENERATION WEEK 17 (1997); see also Michael Fumento, A Revolting Administration; Government’s Opinion on the proposed EPA Standards, 29 REASON 32 (1997).

⁴ Review of EPA’s Proposed Ozone and Particulate Matter NAAQS Revisions before the Comm. Commerce and the Subcomm. on Oversight and Investigations, 105th Cong. 139 (1997) (statement of Rep. Tom Bliley, Chair, House Subcomm. on Oversight and Investigations, Commerce Committee).

⁵ *Id.*

⁶ Letter from the Honorable Henry Waxman, Chairman of the House Oversight and Government Reform Committee to the Honorable Stephen Johnson, Administrator, U.S. EPA (March 12, 2008) (citing, Letter from Dr. Rogene Henderson, Chair of the Clean Air Science Advisory Committee, to EPA Administrator Stephen Johnson (Sept. 29, 2006).

⁷ Editorial, *Whiter Than White*, WALL ST. J., Feb. 14, 1997 at A14.

⁸ *Id.*

⁹ Congressional Groups Go After EPA Rule, 18 GENERATION WEEK 17 (1997).

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process during the Clinton administration is essential. A failure to include a review of the previous administration risks the investigation being perceived as little more than partisan politics, an effort to show that the Bush administration exercised its constitutional authority in some improper way while ignoring that the Clinton administration exercised its authority in exactly the same way.

Accordingly, I ask that we immediately seek documents from the Archives relating to the White House's involvement in the 1997 promulgation of the ozone standard. Given that these documents are unlikely to be available in time for the scheduled April 24 hearing, and that a key witness, OIRA Administrator Susan Dudley, is also not available that day, I request that the hearing be postponed until the week of May 5. It is our understanding both Susan Dudley and Stephen Johnson are available that week. Obtaining the Clinton administration documents and having the OIRA Administrator at the hearing would greatly enhance the value of the hearing and justify this short delay.

Thank you for your consideration of this request.

Sincerely,



Tom Davis
Ranking Member